

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Irwin Winkler

Serial No.: TBD Examiner: Unassigned

Filed: January 29, 2004 Group Art Unit: Unassigned

For: **Machine-Readable Optical Disc with Reading-Inhibit Agent**

Atty. Docket No.: 109960.220 US5

Mail Stop Reissue
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING UNDER 37 CFR § 1.8(a)

I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage as express mail in an envelope addressed to: Mail Stop Reissue, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on January 29, 2004.



Marijke Abbes

STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF THE NON-SIGNING INVENTOR

By signing below, I, M. Scott Carey, hereby declare the following:

1. I am Vice President of Legal Affairs at Flexplay Technologies, Inc. My registration number is 50,998. I am making this declaration in support of the Petition Pursuant to 37 CFR § 1.47(b) filed herewith.
2. Together with attorneys from Hale and Dorr LLP, I prepared a set of claims for the above-referenced reissue application.
3. I discussed the reissue application with Mr. Winkler at least as early as January 12, 2004. Based on our discussions, it was apparent to me that Mr. Winkler was familiar with the patent and its disclosure from its parent filing. Mr. Winkler requested to be paid for his time required to review the application documents. We were not opposed to compensate Mr. Winkler for his time and asked him to provide us with his hourly rate.

4. On January 14, 2004, Mr. Winkler sent me a proposed consulting proposal, but we did not agree to any terms at that time.
5. Pursuant to my January 12, 2004 discussion with Mr. Winkler, I sent a draft of the claims and the inventor's declaration for the above referenced reissue application to Mr. Winkler on January 15, 2003 via email.
6. On January 20, 2004, I sent Mr. Winkler a revised proposed engagement letter. However, we could not agree on key terms such as the amount of compensation. Mr. Winkler's rate was several times that proposed by any of the other inventors. Mr. Winkler refused to negotiate his proposed rate with me. The final offer that Mr. Winkler provided me also did not suggest a cap on his estimated fees. Further, Mr. Winkler's final offer was nearly double his initial January 14, 2004 proposal. Mr. Winkler refused to do any work with respect to the reissue application without being compensated at his proposed rate. Mr. Winkler's refusal to participate in the reissue application was entirely based on the failure to reach agreement on his compensation for his time and not as a result of the material contained in the reissue application papers that were sent to him.
7. We remain hopeful that Mr. Winkler will reconsider his position and will agree to participate in the reissue application on terms that are reasonable. We have asked Mr. Winkler to reconsider his position.
8. In summary, despite repeated attempts to come to terms with him, Mr. Winkler has refused to participate in the reissue application and the inventor's declaration on reasonable terms.
9. A copy of all correspondence between Mr. Winkler and me is attached hereto as Exhibit A.
10. Acceptance of this petition is needed to prevent irreparable damage or preserve the rights of the parties. Specifically, the filing date of the reissue application is needed to preserve Flexplay's right to pursue a broadening reissue patent.
11. I declare further that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true, and further that the statements are made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the patent application or any patent issuing therefrom.

Date: 29 JANUARY 2004


M. Scott Carey

Abbes, Marijk

From: M. Scott Carey [scott@flexplay.com]
Sent: Monday, January 12, 2004 3:28 PM
To: Irwin Winkler
Subject: RE: Contact Info

Irwin,

My apologies for not remembering myself. My contact information is below. If you have any more questions please do not hesitate to contact me.

Scott

M. Scott Carey

Vice President of Legal Affairs

Flexplay Technologies, Inc.

274 Madison Ave.

Suite 701

New York, NY 10016

Ph. 212.448.1300

Fax 212.448.0900

Cell 917.412.5670

e-mail: scott@flexplay.com

-----Original Message-----

From: Irwin Winkler [mailto:irwin.winkler@verizon.net]
Sent: Monday, January 12, 2004 3:23 PM
To: scott@flexplay.com
Subject: Contact Info

Scott,

It was nice chatting with you this morning. I realized after our conversation that I neglected to ask you for your phone number. Could you please send it? My contact info is attached.

-Irwin

Irwin C. Winkler, Ph.D.
Arlington Consulting Group, Inc.
24 Gould Road
Arlington, MA
irwin.winkler@verizon.net

1/29/2004

617.970.1082 (mobile)
781.643.5428 (fax)

Abbes, Marijke

From: Irwin Winkler [irwin.winkler@verizon.net]
Sent: Wednesday, January 14, 2004 4:30 PM
To: scott@flexplay.com
Subject: Proposal

Scott,

Attached is a draft of the proposal, as promised. I look forward to receiving your response. I've also attached a Bio for your reference.

Regards,
Irwin

Irwin C. Winkler, Ph.D.
Arlington Consulting Group
617.970.1082
781.643.5428 (fax)
irwin.winkler@verizon.net

1/29/2004

Arlington Consulting Group

Arlington Consulting Group, Inc.
Irwin C. Winkler, President
24 Gould Road
Arlington, MA 02476
617.970.1082
irwin.winkler@verizon.net

January 14, 2004

Mr. M. Scott Carey
Vice President of Legal Affairs
Flexplay Technologies, Inc.
274 Madison Ave.
Suite 701
New York, NY 10016

CONFIDENTIAL – DRAFT

Dear Mr. Carey,

It was a pleasure discussing Flexplay's interest in strengthening its patent position. I look forward to assisting in this effort by reviewing the revised claims associated with patent number 6,011,772.

Background

Approximately eight years ago I led a team of chemists, physicists and engineers in creating technology for a limited-life optical disk. The project team members were all employees of Arthur D. Little, Inc. at the time, and the work was performed under contract with Quixote Corporation. The results of our efforts led directly to patent number 6,011,772, Machine-Readable Optical Disc with Reading-Inhibit Agent. Several of the project team members are listed as inventors on the patent, myself among them.

Flexplay Inc. now owns the rights to patent number 6,011,772, and would like to strengthen their position by broadening the patent's claims. To assist in this effort, Flexplay has contacted Arlington Consulting Group to enlist the participation of Irwin Winkler.

Objectives and Scope

The objective of this assignment is to review a list of claims, drafted by Flexplay, and assess their compatibility with the disclosures made in patent 6011772. Also included in the scope, is a review of two additional documents: an oath and a declaration associated with the new filing.

Approach

Our review and assessment will be performed by Irwin Winkler and will be based on the documents provided by Flexplay, as well as other information that is readily available. Where information gaps occur, we will rely upon our experience and professional judgement to reach our conclusions.

Report

Our results will be summarized and reported in a teleconference to be scheduled approximately one week after we begin work, at time that is mutually convenient for Flexplay and Arlington Consulting Group. This will constitute our final report.

Cost and Duration

For the work outlined above, we propose that you authorize a budget for professional services of approximately \$3500. Related expenses will be billed in addition to the professional service charge, and shown as a separate figure. These expenses may include travel, material and supplies, taxes, or other items directly related to this project.

Payment will be due regardless of the outcome of the assessment and will not be contingent upon Irwin Winkler's signing the oath and/or declaration referred to in the Objectives and Scope section of this proposal.

We anticipate being able to start work upon receipt of your authorization and initial payment, and expect to present our final results one week later. Although we feel the proposed time and cost are adequate to bring the engagement to a successful conclusion, completion within these limits depends not only on daily developments in the work, but also on changes in the direction of the work as dictated by your needs or desires. We will bring to your attention, as soon as recognized, any factors that will affect these estimates, including adjustments to the schedule.

To initiate the project, please send us oral or written authorization to proceed, along with an initial payment of \$2000. This authorization must specify (please see attached form): the purchase order number to which each of our invoices should refer, if applicable; the address to which the invoices are to be sent; the exact name of the entity to be invoiced; and the name, telephone number, and e-mail address of the person in your Finance Department who is responsible for arranging payment.

Our invoices will be payable upon receipt, on the following dates:

- Professional fee of \$1750, plus \$250 for expenses, upon acceptance of this agreement.
- Professional fee of \$1750 plus expenses upon delivery of our final report.

On completion of this assignment we will issue a final balancing invoice or credit note. Expenses will be shown separately on our invoices.

January 29, 2004 Page 3
Mr. M. Scott Carey

CONFIDENTIAL-- DRAFT

Our terms and conditions, a copy of which is enclosed in Appendix 1, will apply throughout this contract.

If this proposal is acceptable to you, please indicate your authorization to proceed by signing and returning the duplicate copy of this letter to me. This proposal shall remain open until January 21, 2004 unless extended in writing.

I look forward to working with you on this important assignment. If you would like to discuss any aspect of the proposal with us, please contact me, at 617.970.1082.

Kind regards,

Irwin C. Winkler
President

Enclosure

Approved for:

Accepted by:

Arlington Consulting Group, Inc.

Flexplay, Inc.

By : Irwin C. Winkler

By :

Title : President

Title :

Date : 1/14/04

Date :

For ease of administrative handling, please complete this form

- The purchase order number to which our invoices should refer (if applicable) _____
- The address to which the invoices are to be sent _____

- The exact name of the entity to be invoiced _____
- The name, telephone number, and e-mail address of the person in your Finance Department who is responsible for arranging payment _____

Remittance Information

Please wire remittance to : Fleet Bank, Arlington Center, Arlington, MA Routing number: 01000138 Account number: 9419694786 Account name: Arlington Consulting Group, Inc.	Or, please mail remittance to: Arlington Consulting Group, Inc. 24 Gould Road Arlington, MA 02476
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Appendix 1: Terms and Conditions

Our work for clients is conducted on a confidential basis, and we will treat information received from you or developed by us as such.

Our work will be performed on a best efforts basis consistent with that degree of skill and care normally exercised by consulting firms performing services of a similar nature. Our total liability arising out of or in connection with the results of our work or any recommendations made pursuant to this agreement shall not exceed the total compensation paid to us, and Flexplay hereby agrees to release, indemnify, and hold us harmless from and against any costs or liability in excess thereof including claims against us by third parties. Arlington Consulting Group shall not be liable for any indirect, consequential, special, or incidental losses or damages.

It is our general practice and requirement that our reports or memoranda resulting from assignments may not be reproduced or used in whole or in part outside the client organization without our prior written approval. Any such reports or memoranda will be prefaced by us with our disclaimer which is as follows:

“This report was commissioned by on terms specifically limiting the Arlington Consulting Group’s liability. Our conclusions are the results of the exercise of our best professional judgement, based in part upon materials and information provided to us by and others. Use of this report by any third party for whatever purpose should not, and does not, absolve such third party from using due diligence in verifying the report’s contents.

Any use which a third party makes of this document, or any reliance on it, or decisions to be made based on it, are the responsibility of such third party. The Arlington Consulting Group accepts no duty of care or liability of any kind whatsoever to any such third party, and no responsibility for damages, if any, suffered by any third party as a result of decisions made, or not made, or actions taken, or not taken, based on this document.”

Our agreement may be terminated on 15 days’ written notice by either party, or within such lesser time as we may find necessary to conclude the work currently under way and summarize our findings for you. In that event, you will be responsible only for the professional services and expenses which have been committed to that time.

This Agreement (including resolution of any disputes arising hereunder) will be governed by and interpreted according to the laws of the Commonwealth of Massachusetts, U.S.A.

Irwin C. Winkler

Dr. Winkler is the founder of Arlington Consulting Group, a provider of senior-level advisory services to clients worldwide. Prior to Arlington Consulting, Dr. Winkler was an Associate Director in the Cambridge Office of Arthur D. Little, Inc. He has over twenty years of experience in various applications of laser and optoelectronic technology. His current focus is on technology trends, markets, and business opportunities in the biomedical and optoelectronics industries.

Before he joined Arthur D. Little, Dr. Winkler was a member of the technical staff of Massachusetts Institute of Technology's Lincoln Laboratory, where he worked in the Optics Division. While a member of the Laser Beam-Steering Group, he developed adaptive and nonlinear optical technologies for the propagation and control of laser radiation. Dr. Winkler's formal training in physical chemistry (laser spectroscopy) included the development of various laser techniques for the study of chemical and physical processes in organic solids.

Some of the specific projects that Dr. Winkler has completed include:

- For a manufacturer of compact disks, developed technology to limit the useful life of a digital video disk (DVD). Led a team of physicists, chemists, and engineers to identify critical features of the disk that could be modified so as to make the disk unreadable after a specified time. Demonstrated various embodiments of the technology in the laboratory and was awarded U.S. patent, number 6011772.
- For a manufacturer of print media interested in acquiring advanced laser printing technology, performed a technical due diligence. Reviewed the relevant patents, including issues related to laser ablation. Assessed the manufacturing and research facilities, evaluated the existing and future embodiments of the optical print engine designs, and interviewed the key technical staff.
- For a U.S. venture capital firm, evaluated the technical viability, competitive advantage, potential applications, and patent portfolio for an investment in laser-activated semiconductor switching technology. Described the technical risks, characterized the applications as near-term and long-term, and identified potential patent infringement issues.
- For a large law firm, provided expert witness support in the area medical laser technology. The dispute centered on a proprietary beam steering device used for dermatological procedures. Identified a major flaw in the teachings of a key patent and performed calculations and laboratory experiments to prove our claims. The work substantially strengthened the client's position and led to a favorable settlement.

- For a pharmaceutical company interested in commercializing their photodynamic therapy, assisted with the evaluation of a potential joint venture partner. The prospective partner was a manufacturer of medical lasers and laser beam delivery devices for dermatological, hair removal and photodynamic therapy applications. Our technical audit revealed serious deficiencies in their laser and fiber delivery device capabilities and lead our client to reconsider his options.
- For a venture capital firm, performed a technical due diligence on an automated DNA sequencing technology involving lasers, photovoltaics, and RF transceivers. Conducted site visits, interviewed the inventor and senior members of his development team. Identified the primary technical risks, estimated the time to market, and recommended an investment approach that was gated by the accomplishment of key technical milestones.
- For a large U.S. semiconductor manufacturer planning to enter the photonics business, reviewed their technology, target markets, and business plan. The work focused on a proprietary optical transceiver technology developed for broadband networking equipment applications. Assessed their intellectual property position, product roadmap, the competitive landscape, and factors driving near and long-term demand.
- For a manufacturer of optical fiber, assessed the market and current technologies for optical-fiber, and optical fiber preform manufacturing. Evaluated the markets and technologies from the perspective of the communication technologies driving growth (DWDM, i.e., broadband) and the opportunities being created by the expiration of the basic patents.
- For a leading overseas stepper manufacturer, assisted with a strategy review addressing such issues as market timing for twelve-inch wafer capability, optical materials for 193 nm lithography, and after-optics illumination sources.
- For a large U.S. stepper manufacturer, conducted an industry wide study of optics and materials problems encountered with laser photolithography in semiconductor fabrication. Surveyed end-users, suppliers, and researchers to determine how manufacturing materials and procedures can effect the performance of the illumination and projection optics. Developed a mathematical model to estimate the condensation rate of outgassing products on optical surfaces. Results were used to guide material choices and manufacturing protocols;

Dr. Winkler has also managed scientific and advanced engineering projects in academic, industrial, and government settings that varied in scale from laboratory bench-top to space-based demonstrations. Some of the projects include:

- Development of a sodium vapor optical phase conjugator for correcting optical distortions at very low light levels;
- Development of a technology to replace water-cooled mirrors for adaptive optics using light (Raman) amplifiers and deformable mirrors;
- Design of a laser-based spectroscopic detection scheme for measuring trace impurities in high-purity gases that are used in the semiconductor industry;
- Design of a space-based, speckle-tracking laser radar for detecting objects in space;
- Design of a test facility to detect trace amounts of outgassing materials that are used in advanced photolithography tools;
- Development of spectroscopic techniques for studying organic photochemistry in solid matrices using lasers;

After receiving his Ph.D. in physical chemistry (laser spectroscopy), Dr. Winkler did postdoctoral research at the Massachusetts Institute of Technology. At the completion of his postdoctoral fellowship he was appointed to the technical staff of MIT Lincoln Laboratory. Dr. Winkler has over 35 publications and presentations and is a past member of the OSA and IEEE.

Abbes, Marijke

From: M. Scott Carey [scott@flexplay.com]
Sent: Thursday, January 15, 2004 4:39 PM
To: irwin.winkler@verizon.net
Subject: RE: Flexplay. Reissue.



Boston_1819089_2.DOC



Boston_1814968_1.PDF



Boston_1814942_1.PDF



Boston_1814982_1.PDF

Dear Mr. Winkler,

Again, thank you for speaking with me the other day. I'm attaching one set of claims and a corresponding inventors' declaration which we are considering and hoping that you could review as we discussed. I send it now so you have something concrete to get a sense of the nature of the scope of work. Naturally, we'd fully welcome your views and thoughts on such.

I will call you today or tomorrow morning regarding the draft of the consulting agreement. Thank you again for your timely attention to this matter.

I will be sending a separate email and declaration for another set of claims.

Please feel free to call me with any questions.

Regards,
Scott

M. Scott Carey, Esq.
Vice President of Legal Affairs
Flexplay Technologies, Inc.
274 Madison Ave.
Suite 701
New York, NY 10016
Ph. 212.448.1300
Fax 212.448.0900

Abbes, Marijk

From: M. Scott Carey [scott@flexplay.com]
Sent: Thursday, January 15, 2004 4:54 PM
To: irwin.winkler@verizon.net
Subj ct: RE: Flexplay. Reissue. The other set of claims and other declarations



Boston_1817644_1
.DOC



Boston_1814958_1
.PDF



Boston_1814942_1
.PDF



Boston_1814982_1
.PDF

Dear Mr. Winkler,

Here is the separate email and declaration for another set of claims I mentioned in my first email.

Thank you.

Regards,

M. Scott Carey, Esq.
Vice President of Legal Affairs
Flexplay Technologies, Inc.
274 Madison Ave.
Suite 701
New York, NY 10016
Ph. 212.448.1300
Fax 212.448.0900

Abbs, Marijk

From: M. Scott Carey [scott@flexplay.com]
Sent: Tuesday, January 20, 2004 4:17 PM
To: irwin.winkler@verizon.net
Subject: RE: Flexplay



Draft engagement
letter for rei...

Irwin,

Please find attached an engagement letter I would like to use with all the inventors to keep the process standardized. I would like to know if you would consider working with this document instead of the one you proposed. We can certainly tweak the rate and such to be more in line with your time expectations for the review. Hopefully, you have a pretty good sense of what's involved now based on the draft documents we sent you last week.

Please let me know your thoughts at your earliest convenience.

Scott

January 20, 2004

Re: U.S. Patent No. 6,343,063

Dear Mr. Simone:

Engagement

1.1 This letter confirms our engagement agreement (the "Engagement") pursuant to which you have been retained by Flexplay Technologies, Inc., ("Flexplay") to perform, and you have agreed to perform, certain review services in connection with the above referenced patent in filing reissue patent applications and aid Flexplay in meeting all requirements for filing and securing the grant of patents for the reissue patent applications of the above referenced patent in the United States Patent Office.

Fees

2.1 Your rate will be

\$_____ per hour

Disbursements, if applicable, are billed in addition to fees. In no event shall your fees exceed \$2,500, unless Flexplay has provided you written authorization to do so.

You will be provided a retainer of two thousand (\$2,000) USD from which you will bill your first _____ hours against.

2.2 Unless instructed otherwise in writing, you shall bill Flexplay upon the completion of your work and your invoice shall include a description of the tasks performed and hours worked by you on the Engagement as well as a statement of the total amount of out-of-pocket expenses and disbursements incurred with subtotals by category. You are required to attach the appropriate receipts or records for such expenses and disbursements.

2.3 Flexplay will process your bills promptly and will remit payment to you within thirty (30) days after an invoice is received. Payments will be sent to you at

Confidentiality

3.1 All work performed and materials and work product of any kind generated in furtherance of the Engagement will be deemed to be confidential.

3.2 Accordingly, you will treat and maintain as confidential all information, documents, materials, and work product that are, have been, or will be generated or created by you or communicated or provided to you by Flexplay or Hale and Dorr relating to any activity or project undertaken as part of the Engagement and you will not reveal any such information, documents, materials, or work product to any person or utilize any of them in any way except as directed or approved by Hale and Dorr and/or Flexplay; provided, however, that you may reveal such information, documents, materials, or work product pursuant to government process after prior notice to Hale and Dorr when possible and to the extent permissible by law under the circumstances to afford Hale and Dorr and/or Flexplay an opportunity to challenge such process at the discretion and expense of Hale and Dorr and/or Flexplay.

Ownership

4.1 You claim no ownership rights in the reissue applications, such rights in the invention having been previously assigned to Quixote and subsequently to Flexplay. Flexplay shall own all right in the inventions disclosed in the subject patent applications.

Completion Date

5.1 You understand that all work associated with the filing of the reissue applications is time sensitive and that Flexplay must file all initial documentation with the United States Patent Office on January 29, 2004. You agree to complete all work and to provide Hale and Dorr all executed documents associated with the initial filing of the reissue patent applications of the above referenced patent by **January 27, 2004**.

Effective Date, Term and Termination

6.1 The Engagement and terms of this letter shall be deemed to be effective as of January 20, 2004.

6.2 Flexplay may terminate the Engagement at any time. Upon notice of termination, you will stop work immediately. Flexplay will be responsible for all fees and expenses incurred prior to your stopping work.

6.3 The agreements, terms, and understandings set forth in the Engagement shall survive the termination of any and all work performed pursuant to the Engagement.

Savings and Headings

7.1 Should any part of the Engagement be rendered or declared illegal, legally invalid, or unenforceable by a court of competent jurisdiction or by the decision of an

January 20, 2004

Page 3

authorized governmental agency, such invalidation of such part of the Engagement shall not invalidate the remaining portions thereof.

7.2 Section headings are for convenience only and are not part of the Engagement.

Execution of the Engagement

8.1 The Engagement may be executed in one or more counterparts, all of which together shall constitute one and the same agreement and each of which shall be an original.

We look forward to working with you in connection with your engagement.

Very truly yours,

Flexplay Technologies, Inc.

By: _____

M. Scott Carey, Esq.

The above sets forth the terms of the engagement and is agreed to on behalf of the addressee, as indicated below.

Dated: _____

Abbes, Marijk

From: Irwin Winkler [irwin.winkler@verizon.net]
S nt: Wednesday, January 21, 2004 3:12 PM
T : 'M. Scott Carey'
Subject: RE: Flexplay

Scott,

I never agreed to sign anything other than the proposal that I sent, which was drafted for the purpose of helping you broaden the claims and strengthen your position, not to procure my signature.

As for my fees, I have a higher billing rate than the other people involved and work from a different business model; I need to recover the cost of every sale, they don't.

In any case, good luck with the business.

Regards,
Irwin

-----Original Message-----

From: M. Scott Carey [mailto:scott@flexplay.com]
Sent: Wednesday, January 21, 2004 2:35 PM
To: Irwin Winkler
Subject: RE: Flexplay

Irwin,

I'm sorry to hear that you refuse to sign the necessary filing papers unless you receive \$6,000 dollars. Again, we very much want to compensate you fairly for your time, but feel that your proposal is very high, especially in light of what the other named inventors have proposed after their initial review of the same filing materials that were sent to you. I wish you would reconsider.

In light of your refusal to participate and sign the reissue application papers, we have no choice but to procedure under the patent rules that provide for filing applications when an inventor refuses to sign filing documents.

Again, I hope that you reconsider your position. Time is of the essence in this matter and we intend to proceed with the reissue filing on January 29th.

Regards,
Scott

-----Original Message-----

From: Irwin Winkler [mailto:irwin.winkler@verizon.net]
Sent: Wednesday, January 21, 2004 11:11 AM
To: 'M. Scott Carey'
Subject: RE: Flexplay

My previous message represents my best and last offer.

-----Original Message-----

From: M. Scott Carey [mailto:scott@flexplay.com]
Sent: Wednesday, January 21, 2004 11:05 AM
To: Irwin Winkler
Subject: RE: Flexplay

Irwin,

As I indicated in my voice mail of yesterday, I think there has been a misunderstanding with respect to what we are asking you to do. There is only one patent disclosure you have to review. All the disclosures are identical and they arise from (and are identical to) the original application that was filed. So you do not have to review three patents. With respect to retaining a patent attorney, perhaps the best thing to do is work with the Tiax folks. They are considering using a few hours of an attorney's time as a group. Why not contact Mr. Powell to discuss this possibility?

Please call me today to discuss further. To date none of the named inventors have come back with estimates as high as either of your projections. I would very much like to conclude this issue today. We have to file the reissue application by January 29th. This is a non extendable deadline. If we miss it, we cannot file a reissue application.

Regards,
Scott

-----Original Message-----

From: Irwin Winkler [mailto:irwin.winkler@verizon.net]
Sent: Tuesday, January 20, 2004 5:02 PM
To: 'M. Scott Carey'
Subject: RE: Flexplay

Scott,

I took a quick look at the materials you sent. In as much as I will need to review the claims against three patents, find a qualified patent attorney, have him review the claims and other documents you sent, review the documents with council, all on an expedited basis, I will need to revise my fee upwards, probably around \$6000 for professional services. Also, the initial payment will need to cover my legal costs.

If you wish to proceed please let me know and I will send you an executable form of my original proposal, with revised estimates. I am willing to spend the time to locate an attorney and get an estimate of the legal expenses, but unable to incur any further overhead costs for such a small assignment.

Regards,
Irwin

-----Original Message-----

From: M. Scott Carey [mailto:scott@flexplay.com]
Sent: Tuesday, January 20, 2004 4:17 PM
To: irwin.winkler@verizon.net
Subject: RE: Flexplay

Irwin,

Please find attached an engagement letter I would like to use with all the inventors to keep the process standardized. I would like to know if you would consider working with this document instead of the one you

proposed.

We can certainly tweak the rate and such to be more in line with your time expectations for the review. Hopefully, you have a pretty good sense of what's involved now based on the draft documents we sent you last week.

Please let me know your thoughts at your earliest convenience.

Scott